Ninety-Eighth Legislature - First Session - 2003
Committee Statement
LB 479

Hearing Date: January 31, 2003
Committee On: Revenue

Introducer(s): (Baker)
Title: Change an excise tax on corn and grain sorghum

Roll Call Vote – Final Committee Action:

	Advanced to General File
X	Advanced to General File with Amendments
	Indefinitely Postponed

Vote Results:

5	Yes	Senators Baker, Bourne, Landis, Raikes and Redfield
2	No	Senators Connealy and Hartnett
1	Present, not voting	Senator Janssen
0	Absent	

Proponents:	**Representing:**
Senator Tom Baker	Introducer
Loran Schmit	Himself
Tydd Rohrbough	Cornhusker Energy, Lexington

Opponents:	**Representing:**
Mark Schweers	Nebraska Corn Growers Association
John K. Hansen	Nebraska Farmers Union

Neutral:	**Representing:**
None	

Summary of purpose and/or changes:

LB 479 would amend section 66-1345.01 to increase the corn and sorghum excise tax, or check-off for funding ethanol incentives from one-half cent per bushel of corn or hundredweight of sorghum to one cent. The higher rate would be effective October 1, 2003. The duration of the check-off would also be lengthened by two years. Under the bill, the termination date would move from October 1, 2009 to October 1, 2011.

Explanation of amendments, if any:

The Committee amendments rewrite the bill to place some restrictions on companies seeking to qualify for ethanol production incentives and increase the check-off for the Ethanol Production Incentive Cash Fund (EPIC Fund). The primary restriction on qualifications are provisions defining "new facility" to exclude expansions of existing facilities and any facility at which construction takes place after the June 30, 2004 deadline.

The amendment also would strike obsolete provisions dealing with expired credit programs and the Ethanol Pricing Task Force. It also would provide procedures for collecting excess production credits paid to ethanol producers, and impose new record-keeping requirements. Production incentive tax credits could not be transferred to a related party under the amendment.

<u>Section by section summary</u>

Section 1 would amend section 66-1330 to incorporate the new section 2 into the Ethanol Development Act.

Section 2 would be a new section stating that funds received by the Department of Revenue from an ethanol producer returning excess production credits are to be deposited in the EPIC fund.

Section 3 would amend section 66-1333 to insert a new definition of related parties into the Ethanol Development Act. The definition is two or more individuals, firms, partnerships, LLCs, corporations, etc. which are members of the same unitary group or are considered related persons under the Internal Revenue Code.

Section 4 would amend section 66-1344 to strike two subsections describing expired ethanol incentives and move from current subsection (1) to new subsection (4) provisions describing how the ethanol produced is measured. The production is measured using devices approved by the Department of Agriculture. A new requirement is that the approval be documented annually instead of just initially.

This section also would provide that the production must be measured over a 30-day period to prevent producers from meeting the June 30, 2004 deadline without being fully operational. It also defines "new facility" eligible for benefits under the act to exclude expansions of existing facilities and any facility where construction takes place after the June 30, 2004 deadline. This definition is to apply to contracts entered into before, on, or after the effective date of this act.

Changes to this section also prohibit transfer of the motor vehicle fuel tax credits between related parties as defined in section 3, and require claims for credits to be filed within three years of the date the ethanol is produced, no later than September 30, 2012. They would also require ethanol producers to produce and keep records, invoices, inventory records, reports filed with the federal Bureau of Alcohol, Tobacco and Firearms, and other information as required by the Department of Revenue for at least three years.

To qualify for credits under this section, the producer shall bid the construction project publicly. Preference is to be given to a Nebraska resident bidder and if another bid for construction is accepted, the producer is to demonstrate to the Department of Revenue that no responsible resident contractor bid for the project.

Finally, this section would provide procedures for 1) assessing a deficiency for excess ethanol production credits, interest and penalties; 2) protest of the department action; and 3) resolution of the issues. These procedures are similar to enforcement actions available to the Department with regard to motor vehicle fuel taxes.

Section 5 would amend section 66-1344.01 to prohibit new contracts for the incentive after the effective date of this act. This amendment includes an emergency clause.

Section 6 would amend section 66-1345 to change current provisions that suspend collection of the corn and sorghum excise tax if the EPIC balance exceed $15 million and restarts it if the balance subsequently falls to below $8 million. Under the Committee amendment, the excise tax would be suspended if the EPIC balance exceeds $20 million and restarted if it subsequently falls to below $10 million.

Section 7 would amend section 66-1345.01 to increase the corn and sorghum excise tax from one-half cent per bushel of corn or hundredweight of sorghum to one cent, beginning October 1, 2003, and extending the termination of the corn and sorghum excise tax from October 1, 2009 to October 1, 2011.

Section 8 would amend section 66-1345.04 to enact a transfer of $1.5 million annually from the General Fund to EPIC for 2003-04 and 2004-05 as is currently stated in the section as intent. This section would then restate the intention to appropriate $1.5 million per year from 2005-06 through 2007-08. This is no change from the amounts currently stated as Legislative intent to appropriate General Funds to the EPIC fund.

Section 9 would repeal the original sections.

Section 10 would repeal sections 66-1346 and 66-1350 outright. Section 66-1346 is an expired 50 cents per gallon production incentive for ethyl tertiary butyl ether, and section 66-1350 authorized the Ethanol Pricing Task Force that was terminated according to its terms December 31, 2000.

Section 11 would declare an emergency.

Senator David Landis, Chairperson